

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

L.C. HALSTEAD COMPANY, INC. <sup>1/</sup>

Employer

and

Case 9-RD-2005

FRED F. HOLROYD, ATTORNEY AT LAW  
ON BEHALF OF EMPLOYEES OF  
L.C. HALSTEAD COMPANY, INC.

Petitioner

and

TRUCK DRIVERS, CHAUFFEURS AND HELPERS,  
LOCAL UNION NO. 175, AN AFFILIATE OF THE  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
AFL-CIO

Union

**REGIONAL DIRECTOR'S DECISION AND**  
**DIRECTION OF ELECTION**

The Employer, L.C. Halstead Company, Inc. is engaged in the aerial and underground installation and placement of telephone utilities from its St Albans, West Virginia facility where it employs approximately 25 employees in the current bargaining unit represented by the Union. <sup>2/</sup> The Petitioner, by Attorney Fred F. Holroyd, filed the instant petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking an election to decertify the Union as the collective-bargaining representative of those employees. A hearing was held before a hearing officer of the Board on the issues involved. The parties in attendance at the hearing waived the filing of briefs. <sup>3/</sup>

The issue before me is the appropriate unit for the decertification election. At the hearing, the parties stipulated as to the appropriate unit, which was somewhat different

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<sup>1/</sup> The Employer's name appears as amended at the hearing.

<sup>2/</sup> There is no evidence or contention that the Employer is engaged in the construction industry.

<sup>3/</sup> No representative for the Union made an appearance at the hearing.

than the certified unit. Moreover, it did not appear that the stipulated unit conformed to any recognized or contractual unit. However, after the close of the hearing, the Employer and Petitioner entered into a post-hearing stipulation that the certified bargaining unit was the appropriate unit for the purposes of a decertification election.<sup>4/</sup> After considering the record evidence and arguments of the parties, I find that the certified unit is an appropriate unit for conducting a decertification election.

Accordingly, I have decided to direct an election in the certified unit. To provide a context for my discussion of the issue, I will present the facts and reasoning that supports my decision and conclusions.

## **I. THE APPROPRIATE UNIT**

### **A. The Facts**

On March 11, 1987, the Board certified the Union as the exclusive representative of the employees in the following unit:

All employees employed by the Employer at its St. Albans, West Virginia facility engaged in truck driving, equipment operating, line work, brush and tree trimming, electrical work and air compressor work and laborers, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

Although the record reflects that the Union and the Employer have entered into several collective-bargaining agreements since the initial certification, those contracts are not in evidence. Moreover, there is no evidence that the Union and Employer ever agreed to a different bargaining unit description. Further, even assuming that the "Settlement Agreement," which the Employer introduced into evidence reflects a collective-bargaining agreement with the Union, the language of the agreement is, at best, ambiguous regarding the unit description and is inconsistent with the parties' stipulated unit. Thus, Article 2 of the agreement provides that the Employer recognizes the Union as "the sole labor organization representing employees covered by the Brotherhood of Teamsters' jurisdiction for those classifications listed in Article 7 of this Agreement." However, the job classifications appearing in Article 7 are not coextensive with the stipulated bargaining unit.<sup>5/</sup>

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<sup>4/</sup> After reviewing the post-hearing stipulation, I issued an Order to Show Cause giving the parties an opportunity to present their arguments as to why the stipulation should not be accepted. The Petitioner responded reaffirming its stipulation. Neither the Employer nor the Union responded to my Order.

<sup>5/</sup> The job classifications mentioned in Article 7 are Class A, B and C linemen, flaggers and laborers.

## **B. The Analysis and Conclusion**

It is well settled that the bargaining unit in which the decertification election is held must be coextensive with the certified or recognized unit. *Campbell Soup Co.*, 111 NLRB 234 (1955); *W.T. Grant Co.*, 179 NLRB 670 (1969); *Bell & Howell Airline Service Co.*, 185 NLRB 67 (1970). Mindful of the fact that Congress made no provision for the decertification of part of a certified or recognized unit, the existing unit normally is the appropriate unit in decertification cases. Thus, in the absence of any evidence that the Employer and Union agreed to alter the scope of the certified bargaining unit after the certification, the only appropriate unit in which to direct a decertification election is the certified bargaining unit.

## **II. SUPERVISORY ISSUES**

The record reflects that James Warden, Jr., John Edwards, and Douglas Chapman have the independent authority to hire or fire employees. Accordingly, I find that Warden, Jr., Edwards and Chapman are supervisors within the meaning of Section 2(11) of the Act. Therefore, I will exclude them from the unit.

## **III. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**All employees employed by the Employer at its St. Albans, West Virginia facility engaged in truck driving, equipment operating, line work, brush and tree trimming, electrical work and air compressor work and laborers, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.**

#### IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Truck Drivers, Chauffeurs and Helpers, Local Union No. 175, an affiliate of the International Brotherhood of Teamsters, AFL-CIO**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

##### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

##### **B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **November 21, 2002**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (513) 684-3946. Since the list will be made available to all parties to the election, please furnish a total of **four** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## **V. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **November 29, 2002**. The request may **not** be filed by facsimile.

Dated: November 14, 2002

/s/ Richard L. Ahearn

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Richard L. Ahearn, Regional Director  
National Labor Relations Board  
Region 9

### **Classification Index**

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